IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 4955 of 2007()

CRIME NO.348/07 OF NEMOM POLICE STATION

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PETITIONERS/ACCUSED NOS.1 TO 3

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1. NAJUMUDEEN, S/O. BAHAVUDEEN, AGED 26,
PLAVILA EDATHEETTU PUTHEN VEEDU, NADUVATHU,
UPANIYOOR DESOM, NEMOM VILLAGE.

2. NAZUMUDEEN, S/O. BAHAVUDEEN, AGED 27,
PLAVILA EDATHEETTU PUTHEN VEEDU, NADUVATHU,
UPANIYOOR DESOM, NEMOM VILLAGE.

3. NAZAR, S/O. BAHAVUDEEN, AGED 35,
CHINTHAKUDI VEEDU, KARAKKAMANDAPAM,
NEMOM P.O.

BY ADV. SRI.AJITH KRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. BNAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007 ALONG WITH B.A.NO.5136/07, THE COURT ON THE `SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos. 4955 & 5136 OF 2007

Dated this the 6th day of September, 2007

ORDER

These applications are for anticipatory bail. Accused 1 to 3 in crime No.348/07 are the petitioners in B.A.No.4955/07. Accused 1 to 4 in Crime No.349/07 of the same Police Station are the petitioners in B.A.No.5136/07.

2. About an incident which took place on 3/8/07 at 10.30 p.m. these crimes in the nature of a case and counter case have been registered by the Nemom Police Station. Essentially and basically it is a dispute between the relatives. Crime No.349/07 has been registered for offences punishable, inter alia, under Sec.326 read with Sec.149 of the IPC. That is the only non-bailable offence alleged in that crime. Crime No.348/07 has been registered, inter alia, for the offence punishable under Sec.308 read with Sec.34 of the IPC.

3. Both counsel submit that the allegations against the

petitioners in these applications have been made maliciously and with vexatious intent. The learned counsel for the petitioners in B.A.No.5136/07 asserts that the allegations under Sec.326 of the IPC is not justified at all as the victims have admittedly not suffered any such injury which would fall within the sweep of Sec.326 of the IPC.

4. The learned Public Prosecutor was requested to take specific instructions and explain. The learned Public Prosecutor fairly submits that there are no indications to suggest that the injury suffered is a grievous injury. The wound certificate has been perused by the learned Public Prosecutor and the relevant details have been read over to me. I am, in these circumstances, satisfied that anticipatory bail can be given to the petitioners in B.A.No.5136/07. The learned Public Prosecutor, however, points out that the 2nd accused is not required to be arrested at all now as he has already been arrested and released from custody at the Police Station because of his illness. Anticipatory bail can hence be granted to accused 1, 3 and 4. Such directions are not necessary in the case of accused No.2 in the light of the stand taken by the learned Public Prosecutor.

5. Coming to the petitioners in B.A.No.4955/07, the learned counsel for the petitioners submits that the allegation

under Sec.308 of the IPC has been raised without any bona fides and with the sole purpose of vexing and harassing the petitioners. The nature of injury suffered has been revealed to the court. I find merit in the contention that the petitioners are entitled for anticipatory bail. The learned Public Prosecutor does not also oppose the said prayer.

6. In the result, B.A.No.5136/07 is allowed. Following directions are issued under Sec.438 of the Cr.P.C. in respect of petitioners 1, 3 and 4. No directions are held to be necessary in so far as the 2nd petitioner is concerned.

(i) Petitioners 1, 3 and 4 shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 12/9/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) Petitioners 1, 3 and 4 shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 13/9/07 and 14/9/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, they shall so make themselves available for interrogation before the Investigating Officer as

and when directed by the Investigating Officer in writing to do so.

(iii) If petitioners1, 3 and 4 do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 12/9/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 12/9/07.

7. B.A.No.4955/07 is allowed. Following directions are issued in favour of the petitioners under Sec.438 of the Cr.P.C:

(i) Petitioners 1 to 3 shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 12/9/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) Petitioners 1 to 3 shall make themselves available for interrogation before the Investigating Officer between 10 a.m.

and 3 p.m. on 13/9/07 and 14/9/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, they shall so make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If petitioners 1 to 3 do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners 1 to 3 were arrested prior to their surrender on 12/9/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 12/9/07.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge